

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FRANKIE LEVI COLE,

Plaintiff,

vs.

B. NIEMAN, A. LARSON, JAMES
JANSEN, TRISH BERNHARDT,
MORIN, NSP Inmate Doctor;
MICHELLE WILHELM, NSP Warden;
SCOTT FRAKES, DCS Director;
NIETO, Officer; ROSALYN COTTON,
Parole Board Chair-Person; DCS
APPEALS BOARD, NEBRASKA
DEPARTMENT OF CORRECTIONAL
SERVICES, STATE OF NEBRASKA,
The; UNITED STATES OF AMERICA,
and WILLIAM BAHR,

Defendants.

4:20CV3074

MEMORANDUM AND ORDER

This matter is before the court on Plaintiff Frankie Levi Cole's Motion for Leave to Proceed in Forma Pauperis ("IFP"). ([Filing 3](#).) As stated in the Prison Litigation Reform Act ("PLRA"), a prisoner cannot

bring a civil action . . . or proceeding [IFP] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action . . . in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

[28 U.S.C. §1915\(g\)](#).

This court has previously determined that three or more federal court cases brought by Plaintiff, while a prisoner, were dismissed as frivolous or for failure to state a claim. *See Cole, et al. v. Houston, et al.*, 4:06CV3314 (D.Neb.) ([Filing 109](#), July 24, 2007 Memorandum and Order requiring Plaintiff to show cause why case should not be dismissed pursuant to PLRA's "three strikes" provision). Previous cases brought by Plaintiff that were dismissed include:

1. *Cole v. Gilliland, et al.*, 8:91CV137 (preservice dismissal).
2. *Cole v. Ebel, et al.*, 8:92CV675 (dismissed as frivolous), *aff'd* 14 F.3d 606 (8th Cir. 1993).
3. *Cole v. Leonard, et al.*, 8:93CV35 (dismissed as frivolous), *aff'd* 14 F.3d 608 (8th Cir. 1993).
4. *Cole v. Houston, et al.*, 8:93CV131 (dismissed as frivolous), *aff'd* 22 F.3d 306 (8th Cir. 1993).
5. *Cole v. Keim, et al.*, 8:93CV211 (dismissed as frivolous), *aff'd* 21 F.3d 432 (8th Cir. 1994).
6. *Cole v. Leech, et al.*, 4:93CV3399 (dismissed for failure to state a claim), *aff'd* 51 F.3d 277 (8th Cir. 1995).
7. *Cole v. Richard, et al.*, 4:94CV3025 (preservice dismissal), *aff'd* 42 F.3d 1395 (8th Cir. 1994).
8. *Cole v. Sievers, et al.*, 4:94CV3199 (dismissed as frivolous).
9. *Cole v. Squires, et al.*, 8:96CV153 (dismissed for failure to state a claim).
10. *Cole v. Johnson, et al.*, 4:97CV3064 (preservice dismissal).

In light of the foregoing, the court will give Plaintiff 30 days in which to show cause why this case should not be dismissed pursuant to the provisions of [28 U.S.C. 1915\(g\)](#). In the alternative, Plaintiff may pay the full \$400.00 filing and administrative fees. In the absence of good cause shown, or the payment of the necessary fees, this action will be dismissed.

IT IS THEREFORE ORDERED:

1. Plaintiff has 30 days to either show cause for why this case should not be dismissed pursuant to [28 U.S.C. § 1915\(g\)](#) or pay the court's \$400.00 filing and administrative fees.

2. The clerk's office is directed to set a pro se case management deadline in this matter with the following text: **July 27, 2020**: deadline for Plaintiff to show cause or pay fees.

Dated this 25th day of June, 2020.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge